

JAMES M. CHUDNOW

IBLA 81-1007

Decided September 22, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. N-32352.

Set aside and remanded.

1. Mineral Leasing Act: Citizenship -- Oil and Gas Leases: Applications: Filing

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James M. Chudnow has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 13, 1981, rejecting his noncompetitive oil and gas lease offer, N-32352. 1/

On March 19, 1981, appellant and one Laurent A. Giesbert filed a noncompetitive oil and gas lease offer pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), for land situated in Elko

1/ While appellant Chudnow purports to represent his co-offeror in this appeal, we note that the status of an attorney-in-fact does not authorize Chudnow to represent Giesbert before this Board.

County, Nevada. The offer was signed by appellant Chudnow for himself and, under a previously-filed power of attorney, for Giesbert. The address of Giesbert was given as "Bosc-Roger-En-Roumois, France." Both appellants certified that they are native-born United States citizens. By decision dated May 28, 1981, BLM required appellants to submit a "certified copy of the birth certificate or proof of United States citizenship for Mr. Laurent Giesbert, co-offeror of lease offer N-32352," within 30 days of receipt of the decision or face rejection of the offer. On June 26, 1981, BLM received a letter signed by the American Consul, Paris, France, dated January 26, 1981, which stated:

Pursuant to the request of Mr. GIESBERT, Laurent Emmanuel _____ for proof of his nationality, the Embassy confirms by this letter that he is of American nationality, born on December 6, 1958 at France _____ and that he is the bearer of valid American Passport No. Z 3628877 issued on Feb. 19, 1980 by the American Embassy, Paris, France.

In its August 1981 decision, BLM rejected appellant's lease offer, concluding that "[t]he document submitted does not satisfy the regulations contained in 43 CFR 3102.1(a) and (b) and 43 CFR 3102.1-1(a), and does not establish the qualification of Mr. Giesbert to hold an interest in a federal oil and gas lease."

In his statement of reasons for appeal, appellant contends that the document which they submitted constituted proof of the United States citizenship of Giesbert. Appellant states that the document is a standard form supplied by the United States consulate as proof of "nationality."

[1] The applicable regulations, 43 CFR 3102.1(a) and (b) and 43 CFR 3102.1-1(a), provide in part that a Federal oil and gas lease may only be issued to a citizen of the United States. 2/ Accordingly, we conclude that it was proper for BLM to require appellant to submit proof of United States citizenship in view of Giesbert's address on the application, in order to establish his qualifications to hold an oil and gas lease. Judith Gail Bell, 57 IBLA 139 (1981), and cases cited therein.

BLM found the document, submitted by appellant, deficient in establishing United States citizenship. We must agree. We do not doubt that the letter was signed by the American Consul, Paris, France, or that it attests to the "American nationality" of Giesbert. There is a distinction, however, between a "citizen" and a "national" of the United States. Section 101(a)(22) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. § 1101(a)(22) (1976), defines a "national of the United States" as "(A) a

2/ On May 23, 1980, the applicable regulations were amended. See 45 FR 35161 (May 23, 1980). However, the provisions relating to citizenship qualifications remain unchanged. See 43 CFR 3102.1 (1980).

citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States." See 22 CFR 50.1(d). As such, the term "national" is broader than the term "citizen." See Brassert v. Biddle, 59 F. Supp. 457, 462 (D. Conn. 1944) (construing definition of "national of the United States" under 8 U.S.C. § 501(a) (1946)). Accordingly, a statement that an individual is an American national does not necessarily establish that he or she is an American citizen. ^{3/}

Similarly, the fact that an individual is the "bearer of valid American passport" does not establish United States citizenship. Under the Act of May 30, 1866, as amended, 22 U.S.C. § 212 (1976), a passport may be issued to "those owing allegiance, whether citizens or not, to the United States." The applicable regulation, 22 CFR 51.2(a), provides that a passport may be issued to a "national of the United States," as defined above. Indeed, the Supreme Court has stated that a passport is not evidence of United States citizenship. Uretetqui v. D'Arcy, 34 U.S. 692 (1835).

Despite the failure of Giesbert to submit adequate proof of United States citizenship, we conclude that BLM improperly rejected appellant's lease offer. The May 1981 decision requiring the co-offerors to submit additional documentation in support of their offer specified only "proof of U.S. citizenship." Giesbert submitted what he believed to be proof of United States citizenship within the 30-day time period. We view this submission as a good faith effort to comply with the BLM request, given the seemingly fine distinction between a "national" and a "citizen." In common usage, the terms are virtually synonymous. The appropriate approach for BLM, upon receipt of Giesbert's submission, would have been to request additional documentation or, even better, to specify what documents it considered to be acceptable proof of United States citizenship. ^{4/} See 22 CFR Part 51, Subpart C.

The crucial question, however, is whether Laurent A. Giesbert is a United States citizen. Evidence submitted on appeal would tend to indicate that Giesbert is a United States citizen. Appellant states that Giesbert was born in France on December 6, 1958, and that his "father was a native-born

^{3/} We note that other provisions of the Immigration and Nationality Act provide for issuance of a "certificate of nationality" (8 U.S.C. § 1502 (1976)) or a "certificate of identity" as an American national (8 U.S.C. § 1503(b) (1976)), which accord the holders thereof certain rights or privileges. One of these may be what was issued to Giesbert by the United States consulate in Paris, France. However, such certificates are issued on the basis of evidence of "U.S. nationality," rather than of United States citizenship. 22 CFR 50.10 and 50.11.

^{4/} In any event, the State office decision rejecting the offer failed to indicate in what manner, if any, appellant's submissions were faulty. Conclusory statements that a submission is not acceptable, without even a passing attempt at explaining why, do not constitute the reasoned decision-making which both the public and this Board has a right to expect. See Marilyn S. Watson, 67 IBLA 67 (1982).

U.S. citizen who married a French citizen." Section 301 of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. § 1401 (1976), provides that a person born abroad, one of whose parents is a United States citizen, shall be deemed a United States citizen at birth. There is no evidence that Giesbert does not come within that statutory provision.

Accordingly, we conclude that this case should be remanded to BLM with instructions to issue a lease to appellants, all else being regular.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded to BLM for further action consistent herewith.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

